

 Corrections and Community Supervision DIRECTIVE	TITLE Sexual Abuse Prevention & Intervention - Staff-on- Inmate/Staff-on-Parolee		NO. 4028A
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SUPERSEDES DIR# 4028A Dtd. 03/04/2016	DISTRIBUTION A B	PAGES PAGE 1 OF 6	DATE LAST REVISED
REFERENCES (Include but are not limited to) Penal Law §240.50, §130, "Standards of Inmate Behavior" Rule Series 101, Prison Rape Elimination Act of 2003 (PREA), 42 U.S.C. 15601 et seq.; Directive #0700, 4027A, 4028B, 4910, 6910; DOCCS Training Manual; HSPM 1.60	APPROVING AUTHORITY 		

I. DESCRIPTION: This Directive provides information concerning:

- The prevention of **staff-on-inmate/staff-on-parolee** sexual abuse, sexual harassment, sexual threats, and staff voyeurism;
- The prevention of, detection of, and response to allegations of **staff-on-inmate/staff-on-parolee** sexual abuse, sexual harassment, sexual threats, and staff voyeurism, including prompt and effective intervention to address the safety and treatment needs of an inmate victim of sexual abuse or sexual harassment;
- The duty of all staff to report any allegation of sexual abuse or sexual harassment of an inmate, and to report any actual knowledge or reasonable belief concerning any incident of sexual abuse, sexual harassment, or the existence of an inappropriate relationship between a staff member and an inmate;
- The duty of staff to report any allegation of retaliation for reporting an incident of sexual abuse or sexual harassment, or participating in an investigation of an incident of sexual abuse or sexual harassment;
- The prevention of, detection of, and response to allegations of retaliation for reporting an incident of sexual abuse or sexual harassment, or participating in an investigation of an incident of sexual abuse or sexual harassment; and
- The discipline and/or prosecution of those who commit such acts of sexual abuse, sexual harassment, sexual threats, staff voyeurism, or retaliation.

II. POLICY: The New York State Department of Corrections and Community Supervision has zero tolerance for sexual abuse and sexual harassment. Inmates and parolees have the right to be free from sexual abuse and sexual harassment. Sexual abuse and sexual harassment violate Department rules and threaten security. All allegations of sexual abuse, sexual harassment, or retaliation against staff, an inmate, or a parolee for reporting such an incident or participating in an investigation will be thoroughly investigated. Furthermore, any perpetrator of a sexual abuse or sexual harassment incident will be dealt with severely through discipline or prosecution to the fullest extent permitted by law.

It is the policy of the Department that staff-on-inmate/staff-on-parolee sexual conduct is sexual abuse and is not to be tolerated. Every incident of staff sexual conduct with an inmate or parolee presents a threat to the security of the facility and the Department. All allegations of sexual abuse, sexual harassment, sexual threats, staff voyeurism, or retaliation concerning such an incident will be thoroughly investigated.

Under § 130.05 of NYS Penal Law, an inmate or parolee cannot legally consent to any sexual act with an employee, contract employee, or volunteer (i.e., “staff”). It is a crime for staff to engage in a sexual act with an inmate or parolee. A staff person who engages in sexual conduct, including sexual contact with an inmate or parolee, is guilty of a sex offense even if the inmate or parolee “willingly” participates or manipulates the staff member.

Sexual conduct with a person committed to the custody of the Department is a crime whether it occurs inside a correctional facility, during transportation outside a correctional facility, or while the person is a participant in a temporary release program. Any sexual abuse of an inmate or parolee by a staff member will be prosecuted to the fullest extent of the law.

NOTE: Any incident of sexual assault on staff by an inmate or parolee will be immediately reported to the Office of Special Investigations and handled in accordance with established Department policy for investigation and criminal prosecution of inmates (see Directive #6910, “Criminal Prosecution of Inmates”).

III. DEFINITIONS

- A. Sexual Conduct means sexual intercourse, oral sexual conduct, anal sexual conduct, aggravated sexual contact, or sexual contact and shall have the same meaning as set forth in Penal Law § 130.00.
- B. Sexual Contact means any touching of the sexual or other intimate parts of a person not married to the actor for the purpose of gratifying sexual desire of either party, and shall have the same meaning as set forth in Penal Law § 130.00.

NOTE: “Sexual Contact” does not include touching of the intimate parts of another person during the performance of a personal search in accordance with Department procedures as outlined in Directive #4910, “Control of and Search for Contraband,” or during a medical examination by health care staff for a proper medical purpose.

- C. Sexual Abuse includes:
1. Inmate-on-Inmate Sexual Abuse: Inmate-on-Inmate Sexual Abuse is when one or more inmates engage in sexual conduct, including sexual contact, with another inmate against his or her will or by use of threats, intimidation or other coercive actions. Inmate-on-Inmate Sexual Abuse is a form of “Prison Rape” under the Prison Rape Elimination Act of 2003 (PREA), 42 U.S.C. § 15609.
 2. Staff-on-Inmate/Staff-on-Parolee Sexual Abuse: Staff-on-Inmate/Staff-on-Parolee Sexual Abuse is when an employee, volunteer, intern or outside contractor engages in sexual conduct, including sexual contact, with an inmate or parolee. Staff-on-Inmate Sexual Abuse is a form of “Prison Rape” under PREA.
- D. Attempt to Commit Sexual Abuse is when a person engages in conduct that tends to effect the commission of sexual conduct, including sexual contact.
- E. Sexual Threat means any spoken, written, or other threat to engage in sexual conduct forcibly or against a person’s will. A sexual threat is a type of sexual harassment.
- F. Sexual Harassment includes:
1. Repeated and unwelcome sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature by one inmate, detainee, or resident directed toward another; and

2. Repeated verbal comments or gestures of a sexual nature to an inmate, detainee, parolee, or resident by a staff member, contractor, or volunteer, including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures.

- G. Staff Voyeurism means the intentional or surreptitious viewing, broadcast or recording of an inmate dressing or undressing or of the sexual or other intimate parts of such inmate for the purpose of sexual arousal or sexual gratification, amusement, entertainment, or profit, or for the purpose of degrading or abusing a person.

NOTE: "Staff Voyeurism" does not include the viewing of the sexual or other intimate parts of another person during a personal search in accordance with Department procedures as outlined in Directive #4910; or inadvertently or accidentally during rounds, while assigned to monitor Department security camera systems, during the performance of other official duties; or during a medical examination by health care staff for a proper medical purpose.

- H. Inappropriate relationship means any association with criminals or persons engaged in unlawful activities or any conversation, communication, dealing, transaction, association, or relationship with any inmate, former inmate, parolee or former parolee, or any visitor, friend, or relative of same in any manner or form which is not necessary or proper for the discharge of the employee's duties, and that has not been authorized in accordance with applicable policy.

IV. PURPOSE: The purpose of this Directive is to provide guidelines for the prevention, detection, response and investigation of sexual abuse, sexual harassment or sexual threats, or any act of retaliation against an inmate or parolee for reporting such an incident or for participating in an investigation of such an allegation, including prompt and effective intervention to address the safety and treatment needs of a victim of sexual abuse or sexual harassment, and the investigation, discipline and prosecution of the aggressor(s).

V. PROCEDURE

A. Training

1. In accordance with the Department of Corrections and Community Supervision Training Manual, all employees shall receive, during initial training and as in-service training instruction that relates to the prevention, detection, response, and investigation of sexual abuse and sexual harassment in a correctional environment. Training includes initial training, refresher training at least every two years, orientation training upon reassignment to another correctional facility, and annual refresher information.
2. All contractors and contract employees, volunteers, and interns shall receive orientation and periodic in-service training consistent with their level of inmate contact relating to the prevention, detection, and response to sexual abuse and sexual harassment.
3. All inmates shall receive during orientation at reception, and at facility orientation after transfer, information which addresses sexual abuse and sexual harassment. The information shall be communicated orally and in writing, in a language clearly understood by the inmates. This information will address prevention, self-protection (situation avoidance), reporting sexual abuse and sexual harassment, and the availability of treatment and counseling.

- B. Reporting and Investigation of Staff-on-Inmate/Staff-on-Parolee Sexual Abuse, Sexual Harassment or Sexual Threats: An inmate or parolee may report an incident of sexual abuse, sexual harassment, sexual threats, staff voyeurism or any act of retaliation for reporting such an incident or for participating in an investigation of such an allegation to any employee. The initial inmate or parolee report may be verbal or in writing. For reporting purposes under this Directive, "employee" includes any employee, contractor or contract employee, volunteer, or intern of the Department, or any employee, contractor or contract employee assigned to work in a Department correctional facility by any other State agency.
1. An employee who receives a report that an inmate or parolee is the victim of an incident of sexual abuse, sexual harassment, sexual threats, or staff voyeurism must be aware of the sensitive nature of the situation. The victim must be treated with due consideration for the effects of sexual abuse and sexual harassment.
 2. Any employee who receives a report of sexual abuse, sexual harassment, sexual threats, staff voyeurism, or any act of retaliation for reporting such an incident or for participating in an investigation of such an allegation shall:
 - a. Any facility-based employee shall report the information immediately to their supervisor, who shall immediately notify the Watch Commander. In the event the supervisor is not available, the employee shall immediately notify the Watch Commander directly.
 - b. Any community-based employee who receives a report involving an inmate or parolee, who is being supervised in the community has a duty to report such information to the Supervising Parole Officer (Bureau Chief) who shall immediately notify the Regional Director. In the event the Supervising Parole Officer (Bureau Chief) is not available, the employee shall immediately notify the Regional Director. In the event the Regional Director is not immediately available, the Assistant Regional Director shall be notified to avoid any delay.
 - c. The employee shall report the specific details, in writing, to the Watch Commander or Supervising Parole Officer (Bureau Chief) immediately or as soon as possible after verbal notification, and no later than the end of the shift.
 - d. A medical practitioner who receives such information in the course of providing medical treatment to an inmate is required to report the minimum information necessary as set forth in the Department of Corrections and Community Supervision Health Services Policy Manual (HSPM) 1.60.
 - e. Immediate notification shall be made to the Office of Special Investigations in accordance with Directive #4028B, "Sexual Abuse Reporting & Investigation – Staff-on-Inmate/Staff-on-Parolee."
 3. The Watch Commander shall initiate the sexual abuse protocols in accordance with the facility's Coordinated Response Plan to an Incident of Inmate Sexual Abuse, including securing the crime scene, where appropriate.
 4. Reports of sexual abuse and sexual harassment are confidential and information, including but not limited to the identity of the victim, the identity of the person reporting the sexual abuse or sexual harassment, the identity of witnesses and the identity of the alleged perpetrator, is only to be shared with essential employees involved in the reporting, investigation, discipline, and treatment process, or as otherwise required by law.

5. No retaliation of any kind shall be taken against an inmate, parolee or employee for good faith reporting of sexual abuse, sexual harassment, or sexual threats.
6. A prompt, thorough, and objective investigation shall be conducted in all instances of reported sexual abuse, sexual harassment, inappropriate relationships, and retaliation for reporting such an incident. As directed herein and in accordance with Directive #0700, "Office of Special Investigations (OSI)," and other applicable department policies, this investigation shall be initiated promptly and shall be the responsibility of the Office of Special Investigations who shall determine the appropriate investigative response.

NOTE: Allegations of staff-on-inmate/staff-on-parolee sexual abuse or inappropriate relationships, may be reported to appropriate law enforcement officials and/or prosecutors by the Department's Office of Special Investigations. A person is guilty of falsely reporting an incident if it is proven beyond a reasonable doubt that, knowing the information reported, conveyed, or circulated to be false or baseless, he or she reports to a law enforcement officer or agency the alleged occurrence of an offense or incident which did not in fact occur (Penal Law § 240.50). A report made in good faith based upon a reasonable belief that the alleged conduct did occur does not constitute falsely reporting an incident or lying for the purpose of disciplinary action, even if investigation does not establish evidence sufficient to substantiate the allegation.

- C. Discipline and Prosecution: When investigation substantiates an allegation of sexual abuse and/or inappropriate relationships, it is the Department's policy to refer such incident to the appropriate law enforcement agency or prosecutor, through the Department's Office of Special Investigations, for consideration of criminal charges. Any conduct constituting sexual abuse, sexual harassment, staff voyeurism, inappropriate relationships or any act of retaliation against an inmate, parolee, or employee for reporting an incident of sexual abuse, sexual harassment, staff voyeurism, inappropriate relationships, or for participating in an investigation involving any of those acts may be the basis for disciplinary action whether or not prosecution or a conviction results.

VI. STAFF DUTY TO REPORT

- A. An inmate or parolee may report an incident of sexual abuse, sexual harassment, sexual threats, or an allegation of retaliation concerning such an incident to any employee. The employee shall immediately notify his or her supervisor pursuant to Section V above. The initial inmate or parolee report may be verbal or in writing.
- B. In addition to reporting an allegation of sexual abuse, sexual harassment, sexual threats, or retaliation as reported by an inmate or parolee, all employees, regardless of title, are under a duty to report:
 1. Any knowledge, suspicion, or information regarding an incident of sexual abuse or sexual harassment that occurred in a facility, whether or not the facility is part of the Agency including:
 - a. Any sexual conduct (sexual intercourse, oral sexual conduct, anal sexual conduct, aggravated sexual contact, or sexual contact) between another employee and an inmate or parolee;
 - b. Any inappropriate relationship between another employee and an inmate or parolee;
 - c. Any act of staff voyeurism; or

- d. Any allegation of retaliation for reporting an incident of sexual abuse, or for participating in an investigation of an allegation of sexual abuse.
 2. Retaliation against inmates, parolees, or staff who reported such an incident; and
 3. Any staff neglect or violation of responsibilities that may have contributed to an incident or retaliation.
- C. Any employee having either knowledge or a reasonable belief of any sexual abuse or sexual conduct, including sexual contact, taking place or having taken place between any employee and an inmate or parolee, sexual harassment, any inappropriate relationship between any employee and an inmate or parolee, or any act of staff voyeurism has a duty to report such information.
1. Any facility-based employee shall report such information to their supervisor, who shall immediately notify the Watch Commander. In the event the supervisor is not available, the employee shall immediately notify the Watch Commander directly.
 2. Any community-based employee shall report such information to the Supervising Parole Officer (Bureau Chief) who shall immediately notify the Regional Director. In the event the Supervising Parole Officer (Bureau Chief) is not available, the employee shall immediately notify the Regional Director. In the event the Regional Director is not immediately available, the Assistant Regional Director shall be notified to avoid any delay.
- D. Any employee who receives a report of sexual abuse or sexual harassment, or has either knowledge or a reasonable belief of any sexual abuse, sexual conduct, sexual contact, sexual harassment, inappropriate relationship or staff voyeurism between an employee and an inmate or parolee, or any act of retaliation against an inmate, parolee, or employee for reporting an incident of sexual abuse, sexual harassment, staff voyeurism, inappropriate relationship, or for participating in an investigation involving any of those acts, and who fails to report such information, may be subject to disciplinary action.